per mensem, and the first of such payments to be paid on the 1st day of May 1932."

Now, it was urged upon me that the recent Court of Appeal decision in *Arumugam* v. *Leonard*, (1936) F.M.S.L.R. 1 was conclusive on this point. The Seremban suit was in connection with charge over land for $10,000. In that case the charge was dated the 28th December 1928. The chargor undertook to pay the principal sum on the 28th March 1929 and to pay interest on the principal sum at the rate of 12 per cent per annum by equal payments of $100 on the 28th of every month, the first of such payments to be made on the 28th January 1929. There was no provision for payment of interest after due date, and it is clear that if the chargor paid the principal sum as agreed, he would on the same date, viz. the 28th March, pay the interest then due.

If the assignor of the bill of sale had entered into a similar agreement, I should have felt bound to hold that, as in the case of the charge, there was no reason why the law should imply something which the parties could very well have expressed, i.e. that interest should continue to be paid if default were made in repaying the principal. There would be nothing contravening the requirements of Bills of Sale Enactment in so providing (see Encyclopaedia of Forms & Precedents, Vol. 10, page 550). But the express agreement for the payment of interest in the bill of sale in question is by no means similar to the agreement for payment of interest on the charge in the case cited. It will be seen that the bill of sale is dated the 6th April 1932, but the first payment of one month's interest is on the 1st May when less than a month's interest would be due. Further, the interest is payable on the first day of every month, but the principal is repayable on the 30th July 1932, and the interest for July would not be payable till the 1st August 1932. There is no provision that when the principal is repaid on the 30th July, the assignor shall also pay the interest then due. On the contrary, he is to pay interest by equal instalments of $47.

In the case of *Chagmal Das* v. *Brij Bhukan Lal*, I.L.R. 17 All. 511, 514, where the question to be decided was whether under a certain contract for the repayment of a sum of money in two years, interest was payable after the date fixed for repayment, the High Court pointed out that there was considerable danger attending the applying to one document the judicial construction which had been in a previous case, applied to another, unless the two documents were in exactly the same terms.

This bill of sale must be construed so as to give effect to the apparent intention of the parties, and I find it impossible to hold, without doing violence to the language employed, that it was intended that the principal sum should be paid off with the interest then due on the 30th July 1932, and I conclude, therefore, that it was contemplated that if the principal sum were not repaid on the 30th July, interest at the rate specified would continue to be payable.

I should mention that counsel did not call my attention to the essential difference between the provisions of the Bill of Sale and the agreement for charge in the Seremban case. The applicant did, however, argue that when the bill of sale was renewed under the provisions of section 15 of the Enactment, it was renewed *in toto*, that is to say, that a new date for repayment of the principal was implied. Without expressing an opinion on this point, I think that the fact that a bill of sale is renewable, and that the bill of sale was in fact renewed, strengthens the presumption that it was the common intention of the parties that interest at the rate agreed should continue to be paid *post diem*.

Even, however, if interest is payable, it is not quite clear how much is due, as various payments on account of interest have admittedly been made. In his original affidavit the applicant gave credit for $730 only, but the respondent has been able to produce receipts for $955 (which the applicant now admits), and says that further sums have also been paid.

There will, accordingly, have to be an enquiry before the Registrar as to the amount actually due in respect of the bill of sale on the 26th August 1936, and there will be an order for sale to recover the amount so found and the costs of this application. The costs of the enquiry will be in the discretion of the Registrar, and will be either added to, or deducted from, the amount which the applicant is entitled to recover for principal, interest and costs.

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J., WHITLEY & AITKEN, JJ.

October 27, 1936.

CHIN AH YEE.....**Appellant**

v.

PUBLIC PROSECUTOR.....**Respondent**

AND

CHIN PAU.....**Appellant**

v.

PUBLIC PROSECUTOR.....**Respondent**

[PERAK MAGISTRATE'S CRIMINAL APPEALS Nos. 46 and 47 of 1936.]

The Excise Enactment (Cap. 133) section 54—Analyst—Evidence of alcoholic contents of liquor.

The appellants were convicted by the Magistrate, Ipoh, under section 67 of the Excise Enactment (Cap. 133) with possession and sale of dutiable liquor without a licence.

They appealed and both appeals were referred to the Court of Appeal under section 53 of the Courts Enactment (Cap. 2), the main ground of appeal being that the

Excise Officer who tested the liquor had not been appointed an analyst under section 54 of the Excise Enactment.

Held by the Court of Appeal (Terrell, Acting C.J., Whitley and Aitken, JJ.) that section 54 of the Excise Enactment does not apply in cases in which a person experienced in testing liquor for its alcoholic contents is called by the prosecution as a witness.

T. M. S. O. Mahendran for the appellants.

I. W. Blelloch, Deputy Public Prosecutor for the respondents.

The members of the Court of Appeal delivered oral judgments during which

WHITLEY, J. said:—

"It seems to me that if a person is called and gives evidence of testing liquor for its alcoholic content, states the result and says that he is experienced in such testing and is not cross-examined thereon, the Court is entitled to accept his evidence as to the alcoholic content so stated. Section 54 of the Excise Enactment (Cap. 133) does not apply in such cases. It only applies to those cases where it would be inconvenient to call the person who had made an analysis, providing a means whereby his certificate of analysis may be admitted in evidence."

AITKIN, J. added:—

"I hope that this case will put an end to the argument that the evidence of an analyst within the meaning of section 54 (v) of the Enactment, or an analyst's certificate is necessary in such cases."

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J., WHITLEY & AITKEN, JJ.

October 30, 1936.

PUBLIC PROSECUTOR.....Appellant.

v.

CHONG SENG.....Respondent.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 58 of 1936].

The Minor Offences Enactment (Cap. 46) section 14 (e)—Meaning of expression "pedal bicycle seated for one person."

The respondent was charged under section 14 (1) of the Minor Offences Enactment (Cap. 46) with riding a bicycle and carrying another person on the carrier of his bicycle. He was acquitted by the Magistrate on the ground that the carrier of the bicycle was a seat.

The Public Prosecutor appealed and the appeal was referred to the Court of Appeal under section 53 of the Courts Enactment (Cap. 2).

Held, by the Court of Appeal, that the acquittal by the Magistrate was wrong because the expression "pedal bicycle seated for one person" in section 14 (1) of the Minor Offences Enactment means a pedal bicycle designed to carry one person on a seat and the carrier did not convert a one-seater bicycle into a two-seater bicycle.

I. W. Blelloch, Deputy Public Prosecutor, for the appellant.

Respondent absent.

Cur. Ad. Vult.

TERRELL, AG. C.J.—This was a reference by Aitken, J. to the Court of Appeal under the provisions of section 53 of the Courts Enactment.

The accused, respondent on the appeal, was charged under section 14 (1) of the Minor Offences Enactment which makes it an offence for any person

"being the rider of a pedal bicycle seated for one person permits another person to be carried on such bicycle on any public road."

It was proved that at about 7 p.m. on the 5th August, 1936, the accused was riding a bicycle and carrying another person on the carrier of his bicycle.

The learned Magistrate acquitted the accused on the ground that the 'carrier" of the bicycle was a seat, and that accordingly a bicycle with a carrier is a 'bicycle seated for more than one person,' and does not come within the purview of the Minor Offences Enactment.

The learned Magistrate gave various grounds for his decision which I may summarise as follows:—

(a) The use of the word 'seat' instead of 'saddle' implies that a bicycle which has only one 'saddle' may nevertheless have two seats.

(b) Passengers are habitually carried on the carrier.

(c) The carrier was not provided with straps, and therefore was not intended for the carriage of goods.

(d) From his own experience the learned Magistrate considered that it was no more dangerous to carry a passenger on a pedal bicycle than on a motor-cycle.

In my opinion none of these reasons are tenable.

As to (a), the learned Deputy Public Prosecutor pointed out that a five-seater motor car might have a substantial luggage carrier upon which two persons could sit, but that that possibility would hardly convert the car from a five-seater into a seven-seater. I agree with a suggestion made by my brother Aitken that a bicycle seated for more than one person must be so designed, and that the mere fact that a 'bicycle seated for one person' has various excrescences upon which people can perch does not convert a one-seater bicycle into a two-seater. There are such things as 'tandem' bicycles, and they are specially designed to seat more than one person.

As to (b), it is true that one can see people seated not only on the carrier, but on the cross-bar and handle bar, but such flagrant breaches of the law can hardly affect the interpretation of the Enactment.

As to (c), it is extremely unusual even for hired-car drivers to have straps for their luggage